

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LISA LABELLA, an individual,

Plaintiff,

v.

CASHCALL, INC., a foreign corporation,
WS FUNDING LLC, a foreign limited
liability company, et al.,

Defendants.

Case No. 2:13-cv-01427-MMD-VCF

ORDER

(Def's Motion to Dismiss – dkt. no. 9)

Before the Court is Defendants CashCall, Inc. ("CashCall") and WS Funding, LLC's ("WSF") Motion to Dismiss or, in the alternative, Motion for Stay and to Compel Arbitration ("Motion"). (Dkt. no. 9.)

Plaintiff Lisa LaBella filed the Complaint on August 8, 2013. (Dkt. no. 1.) The Complaint asserts claims under the Fair Debt Collection Practices Act ("FDCPA") and Telephone Consumer Protection Act ("TCPA") regarding Defendants' alleged efforts to collect a debt from Plaintiff. (*Id.* at 3.) The sole basis of Defendants' Motion is that "when LaBella obtained the loan that is the subject of this litigation, she expressly agreed to arbitrate all disputes with WSF and CashCall[.]" (*Id.* at 1.) Defendants assert that Plaintiff signed a loan agreement with an arbitration clause. (*Id.* at 1–2.) In her opposition to the Motion, however, Plaintiff disputes this. (See dkt. no. 11.) Plaintiff's opposition states that "Ms. LaBella did not execute the alleged arbitration agreement or authorize any party to execute the agreement on her behalf" and that "Plaintiff's former roommate fraudulently obtained personal information and executed the subject loan agreement without

1 Plaintiff's knowledge or consent." (*Id.* at 2.) LaBella submits a declaration in support of
2 her opposition. (See dkt. no. 11-1.) In their reply, Defendants argue there is no genuine
3 issue of material fact as to the existence of a valid loan agreement, and submit evidence
4 to support their position that Plaintiff did in fact sign the loan agreement and received the
5 loan money. (See dkt. no. 16.) Plaintiff has not yet had an opportunity to respond to the
6 evidence and arguments presented by Defendants.

7 When one party disputes "the making of the arbitration agreement," the Federal
8 Arbitration Act ("FAA") requires that "the court [] proceed summarily to the trial thereof"
9 before compelling arbitration under the agreement. 9 U.S.C. § 4. The Ninth Circuit
10 interprets this provision as encompassing challenges to a specific arbitration clause *and*
11 challenges to "the making of a contract containing an arbitration provision" as well. See
12 *Three Valleys Mun. Water Dist. V. E.F. Hutton & Co., Inc.*, 925 F.2d 1136, 1140-41 (9th
13 Cir. 1991). Thus, "challenges to the *existence* of a contract as a whole must be
14 determined by the court prior to ordering arbitration." *Sanford v. MemberWorks, Inc.*,
15 483, F.3d 956, 962 (9th Cir. 2007) (*citing Three Valleys*, 925 F.2d at 1140-41). The Court
16 must first determine whether a "genuine issue of fact concerning the formation of the
17 [loan] agreement" exists before it can order arbitration. See *Three Valleys*, 925 F.2d at
18 1141 (*quoting Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 54 (3d Cir.
19 1980)). This standard is similar to that employed by district courts in resolving summary
20 judgment motions pursuant to Fed. R. Civ. P. 56. See *Omstead v. Dell, Inc.*, 533 F.
21 Supp. 2d 1012, 1038 (N.D. Cal. 2008) (*citing Par-Knit Mills*, 636 F.2d at 54 n.8).

22 The Court therefore asks for additional briefing on whether there is a genuine
23 issue of material fact as to the existence of a loan agreement between Plaintiff and
24 Defendants. Plaintiff will be given an opportunity to file a supplemental brief on that
25 question and Defendants will have an opportunity to respond. As the Court must first
26 resolve this question before it may compel arbitration, Defendants' Motion is denied
27 without prejudice to renew in the event the Court resolves this question in Defendants'
28 favor.

1 It is hereby ordered that Defendants' Motion to Dismiss (dkt. no. 9) is denied
2 without prejudice. Plaintiff is ordered to file a supplemental brief consistent with this
3 Order's instructions within fifteen (15) days. Defendants may file a response within seven
4 (7) days of Plaintiff's supplemental brief being filed.

5 DATED THIS 3rd day of September 2014.

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8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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